

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

GN Docket No. 94-33

In the Matter of

Further Forbearance from
Title II Regulation for Certain Types of
Commercial Mobile Radio Service
Providers

COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation ("NYNEX") submits the following
comments in response to the Notice of Proposed Rulemaking
("Notice") in the proceeding captioned above.

I. INTRODUCTION

In the Second Report and Order in GEN. Docket No.
93-252, the Commission classified mobile services as either
commercial mobile radio service (CMRS) or private mobile radio
service (PMRS) and determined that it should forbear from
applying the most burdensome sections of Title II of the
Communications Act to CMRS.¹ In this Notice, the Commission

¹ Implementation of Sections 3(n) and 332 of the
Communications Act, Regulatory Treatment of Mobile
Services, Second Report and Order, Gen. Docket No. 93-252,
FCC 94-31 (released March 7, 1994), ¶¶173-182, 196, 272
(Second Report and Order); Omnibus Budget Reconciliation
Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(A),
6002(b)(2)(B), 107 Stat. 312, 392 (1993) (Budget Act), to
be codified at 47 U.S.C. §§303(n), 332; Communications Act

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seeks comment on whether it should continue to apply the remaining sections of Title II to certain CMRS providers.² In this regard, the Commission questions whether the size of the provider and its compliance costs should be the basis for further forbearance.

NYNEX believes that a guiding principle in determining whether forbearance is appropriate is whether such forbearance would ensure or impair the successful development of a competitive environment for CMRS providers. While we certainly agree that the Commission should streamline its regulatory requirements wherever possible and appropriate, we caution the Commission to be mindful of its Congressional mandate "to modify [existing technical and operational] rules as necessary so that CMRS licensees providing substantially similar services will not be subject to inconsistent regulation arising out of their prior

¹ (Footnote Continued From Previous Page)

of 1934 as amended (Communications Act), §§203, 204, 205, 211, 212, 214, 47 U.S.C. §§203, 204, 205, 211, 212, and 214. Section 332 defines CMRS as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Communications Act, §332(d)(1), 47 U.S.C. § 332(d)(1). The Commission decided to forebear from applying Sections 203, 204, 205, 211, 212 and 214 to CMRS providers.

² The Commission also questions whether technical or operational limitations may exist which make application of certain statutes inappropriate for certain providers of CMRS. The Commission has tentatively decided to continue to apply Sections 210, 213, 215, 218, 219, 220 and Section 223 to all CMRS providers, including small providers, and is considering forbearance from applying Sections 225, 226, 227 and 228 to certain CMRS providers.

regulatory status.³ In our view, the Commission must not stray from this mandate by applying different sets of rules to particular CMRS providers within each class of service. Our analysis reveals no instance where the size of the carrier provides sufficient basis for applying different regulatory treatment to certain CMRS providers. By amending Section 332 of the Communications Act of 1934 and establishing a new class of commercial mobile radio services, Congress has sent the Commission a clear signal that competitive, functionally equivalent services should be subject to consistent regulatory treatment. The Commission's efforts in this proceeding should implement this Congressional interest.

II. THE PUBLIC INTEREST IS NOT SERVED BY FURTHER FORBEARANCE FROM SECTIONS 210, 213, 215, 218-220, 223, 227 and 228

The Commission has decided that forbearance from applying the provisions of Sections 210, 213, 215, 218-220, 223, 227 and 228 to certain CMRS providers would not serve the public interest. We agree. These sections are necessary to promote important public interest objectives. Moreover, there is no evidence that that the cost of compliance with these provisions outweighs the benefit to the public. Where important objectives are at stake, if the public interest would be adversely affected by forbearance, the Commission should not forbear from applying these provisions, even in instances where some CMRS providers may face some cost impediments. Clearly, the size of a CMRS

³ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-115 (May 20, 1994) ("Further Notice").

provider is no basis for jeopardizing important public interest objectives.

A. Section 210

NYNEX agrees with the FCC that the public interest is best served by continued application of Section 210.⁴ This section, which allows common carriers to issue franks and passes to their employees and to provide free service to the Government in connection with national defense, actually eases restrictions on carriers, irrespective of size.

B. Sections 213, 215, 218, 219 and 220

The Commission determined that it is unnecessary to forbear from applying the provisions of Section 213, 215, 218, 219 and 220 to CMRS providers.⁵ NYNEX agrees with the Commission's conclusion that meeting the requirements specified in these Sections would not place any undue burden on any CMRS provider, regardless of the size of that provider. Indeed, as the Commission correctly notes, these provisions do not impose affirmative obligations on CMRS providers. Rather, each provision simply buttresses the Commission's pre-existing enforcement authority without adding any undue or disproportionately burdensome impact on small CMRS providers.

C. Section 223

NYNEX supports the Commission's decision to continue to apply the provisions of Section 223.⁶ The public interest

⁴ Notice at ¶10.

⁵ Id. at ¶11.

⁶ Id. at ¶13.

goal of protecting minors from obscene communications clearly outweighs any concerns that small carriers may have with respect to the costs of compliance. Thus, this section should continue to be applied to all CMRS providers.

D. Section 225

The Commission seeks comment on whether it should forbear from applying Section 225.⁷ It is NYNEX's position that the public interest is best served by the continued application of Section 225 for all types of CMRS providers, regardless of size. Under the Commission's TRS Fund plan, all CMRS providers would fund TRS on a proportional basis, thereby insuring that smaller carriers are not unduly burdened by this obligation. This section serves the interests of consumers and achieves the laudable goal of ensuring that advanced telecommunications services are available to everyone, including persons with hearing and speech disabilities.

E. Section 226

The Commission seeks comment on whether it should forebear from applying Sections 226.⁸ NYNEX believes the Commission should continue to apply the provisions of this Section. Section 226, also known as the Telephone Operator Consumer Services Improvement Act (TOCSIA), protects consumers making interstate operator services calls. NYNEX believes that

⁷ Id. at ¶¶14-17. Section on 225, in conjunction with the Americans with Disabilities Act, requires common carriers providing voice transmission service to provide services that enable persons with hearing and speech disabilities to communicate with hearing individuals.

⁸ Id. at ¶¶20-21.

the public interest is best served by requiring all providers of CMRS to protect consumers from unreasonably high rates and anti-competitive practices such as those described in Section 226.

F. Section 227

The Telephone Consumer Protection Act of 1991 (TCPA), restricts the use of automatic telephone dialing systems, artificial voice messages and facsimile machines to send unsolicited advertisements.⁹ The Commission has correctly determined that forbearance from this Section would not adequately protect the public interest. By requiring all CMRS providers to adhere to this section, the Commission would protect the public from the costs and inconveniences caused by unsolicited advertisements. There is no evidence that certain CMRS providers would face an unfair or disproportionate burden in complying with this Section.

G. Section 228

Section 228 incorporates the Telephone Disclosure and Dispute Resolution Act (TDDRA), which governs pay-per-call services (also known as "audiotext" or "900" services).¹⁰ Local exchange carriers are required to offer customers an option to block access to 900 services where technically feasible. The Notice seeks comment on whether CMRS providers should be obligated to block access as well. Our review of this issue reveals no evidence that particular classes of CMRS

⁹ Id. at ¶24.

¹⁰ Id. at ¶¶26-30.

providers would face implementation costs that would be exceptionally or unduly difficult to bear.

III. CONCLUSION

NYNEX continues to believe that equitable regulatory treatment will ensure the development of a robust competitive market for all commercial radio services, and thus, we strongly encourage the Commission to avoid adopting artificial regulatory distinctions based on the size of service providers.

WHEREFORE, for the reasons set forth in these Comments, NYNEX urges the Commission not to forbear from applying the Sections of the Communications Act to certain CMRS providers as proposed in the Notice of Proposed Rulemaking.

Respectfully submitted,

NYNEX Corporation

By:

J.E. Holmes Nethersole
Edward R. Wholl
Jacqueline E. Holmes Nethersole

120 Bloomingdale Road
White Plains, NY 10605
(914) 644-5735

Its Attorneys

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